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9 ***Attorney for Kadlec Regional Medical Center and Andrew Bieber***

10 UNITED STATE DISTRICT COURT
11 EASTERN DISTRICT OF WASHINGTON

12 JOHN WADE,

13 Plaintiff,

14 v.

15 KADLEC REGIONAL MEDICAL
16 CENTER, a Washington nonprofit
17 corporation; ANDREW BIEBER,
18 PREMIER ANESTHESIA, LLC;
19 JEREMY WILSON; and
20 MARICELA SANCHEZ,
Defendants.

NO. 4:22-cv-05063-MKD

DEFENDANTS' ANSWER
AND AFFIRMATIVE
DEFENSES TO FIRST
AMENDED COMPLAINT
FOR DAMAGES

JURY TRIAL DEMANDED

21
22 **COME NOW** Defendants, Kadlec Regional Medical Center and
23 Andrew Bieber, DO, by and through their attorneys of record, Miller, Mertens
24 & Comfort, PLLC, and Christopher J. Mertens, and by way of answer to First
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1 Amended Plaintiff's Complaint for Damages, hereby admit, deny, and allege
2 as follows:

3 **NATURE OF ACTION**

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5 1. Answering Paragraph 1, the allegations contained therein
6 constitute legal conclusions to which no response is required. To the extent a
7 response is required, these Defendants admit a spinal surgery occurred on
8 February 19, 2019 but deny the remaining allegations contained therein.
9

10 **JURISDICTION**

11 2. Answering Paragraph 2, these Defendants admit this court has
12 jurisdiction but deny any other allegations contained therein.
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14 **VENUE**

15 3. Answering Paragraph 3, these Defendants admit that the Eastern
16 District of Washington is the proper venue for this action.
17

18 **PARTIES**

19 4. Answering Paragraph 4, these Defendants are without sufficient
20 information to admit or deny the allegations contained therein, and therefore
21 deny the same.
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23 5. Answering Paragraph 5, these Defendants admit the allegations
24 contained therein.
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1 6. Answering Paragraph 6, these Defendants admit the allegations
2 contained therein.

3 7. Answering paragraph 7, this paragraph is not directed at these
4 Defendants are without sufficient information to admit or deny the allegations
5 contained therein and therefore deny the same.

6 8. Answering paragraph 8, this paragraph is not directed at these
7 Defendants are without sufficient information to admit or deny the allegations
8 contained therein and therefore deny the same.

9 9. Answering paragraph 9, this paragraph is not directed at these
10 Defendants are without sufficient information to admit or deny the allegations
11 contained therein and therefore deny the same.

12 **FACTUAL ALLEGATIONS**

13 10. Answering Paragraph 10, these Defendants maintain that said
14 allegations are directed towards other Parties that are not joined hereto, and
15 therefore no response from Defendants is required. To the extent a response is
16 required, Defendants deny Plaintiff was scheduled for back surgery on
17 February 18, 2019, admit that Kadlec and Dr. Bieber were not informed by
18 ODOC or Ashley Astorga, NP that plaintiff was treated with Gentamicin and
19 Cleocin or that he was suffering from diarrhea and are without sufficient
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1 information to admit or deny the remaining allegations contained therein and
2 therefore deny the same.

3 11. Answering Paragraph 11, these Defendants maintain that said
4 allegations are directed towards other Parties that are not joined hereto, and
5 therefore no response from Defendants is required. To the extent a response is
6 required, Defendants admit that Kadlec and Dr. Bieber were not informed by
7 ODOC or Ashley Astorga, NP that plaintiff was treated with Gentamicin and
8 Cleocin or that he was suffering from diarrhea.
9

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11 12. Answering Paragraph 12, these Defendants deny that Plaintiff
12 reported to Dr. Bieber that he was experiencing diarrhea or was taking
13 Gentamicin and Cleocin and further deny the remaining allegations contained
14 therein.
15

16 13. Answering Paragraph 13, these Defendants deny that Plaintiff
17 reported to Kadlec medical staff on the day of his surgery he was experiencing
18 diarrhea or was taking Gentamicin and Cleocin. These Defendants are without
19 sufficient information to admit or deny the remaining allegations contained
20 therein and therefore deny the same.
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23 14. Answering Paragraph 11, these Defendants deny Plaintiff had C.
24 diff when he underwent surgery on February 19, 2019 and further deny that
25 “no infectious disease provider was called in”. These Defendants admit
26

1 Plaintiff underwent a colectomy and had portions of his large intestine
2 removed and a colostomy performed but deny the remaining allegations
3 contained therein.

4
5 **COUNT I**

6 15. In Answering Paragraph 15, Defendants reallege all foregoing
7 responses as if fully set forth herein.

8 16. Answering Paragraph 16, these Defendants deny they were
9 negligent in any manner as outlined therein and as it relates to these
10 Defendants.

11 17. Answering Paragraph 17, these Defendants deny the factual
12 allegations therein and any and all allegations of negligence by these
13 Defendants and further deny the nature and extent of Plaintiff's damages
14 alleged therein.

15 18. Answering Paragraph 18, these Defendants deny the same.

16 19. Answering Paragraph 19, these Defendants deny the same.

17 20. Answering Paragraph 20, these Defendants are without sufficient
18 information to admit or deny the allegations contained therein and therefor
19 deny the same and specifically deny Plaintiff is entitled to any damages as a
20 result of any action taken by these Defendants.
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1 21. Answering Paragraph 21, these Defendants deny Plaintiff is
2 entitled to recovery.

3 22. Answering Paragraph 22, these Defendants deny Plaintiff is
4 entitled to damages herein.
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6 **RESERVATION OF RIGHTS**

7 Considering the ongoing factual development and discovery as this
8 matter proceeds, these Defendants reserve the right to amend their answer as
9 discovery may warrant.
10

11 **AFFIRMATIVE DEFENSES**

12 By way of fully answering Plaintiff's Complaint, and without admitting
13 any allegations denied herein, these Defendants raise the following affirmative
14 defenses, reserving the right to add or strike affirmative defenses as discovery
15 may warrant.
16

17 1. Plaintiff's claims are barred by the applicable statute of
18 limitations.
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20 2. Plaintiff's damages, if any, may have been caused and/or
21 contributed to by Plaintiff's own negligence.
22

23 3. Plaintiff's damages, if any, are the result of conduct on the part
24 of others, whether named in the complaint or not, over whom these
25 Defendants had no control. These Defendants further reserve the right to
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1 move at any time to dismiss one or more allegations, claims or the complaint
2 for failure to join a necessary party. If discovery reveals the basis for such
3 claims at any time while this lawsuit is pending, Defendants reserve the right
4 to assert supervening cause of any alleged breach of duty or injury to
5 Plaintiff.
6

7 4. These Defendants request that fault be apportioned amongst all
8 parties and non-parties responsible for Plaintiff's alleged damages, if any
9 including Plaintiff and other non-parties at fault, pursuant to RCW 4.22.
10 These Defendants further expressly reserve the right, in the event that the
11 Plaintiff settles or has already settled with other persons, parties, or third
12 parties, to seek a credit and setoff for any proportionate negligence that the
13 jury shall attribute to the settling parties. These Defendants reserve the right
14 to read portions of depositions, call witnesses to testify at the trial, and
15 introduce and use evidence regarding allocation of fault, even if other
16 persons, entities, parties, or non-parties settle or have already settled with the
17 Plaintiff before trial.
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22 PRAYER FOR RELIEF

23 WHEREFORE, having fully and completely answered Plaintiff's
24 Complaint for Damages and Demand for Jury Trial, Defendants respectfully
25 request the following:
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1. Defendants demand a jury trial in this matter;
2. Dismissal of Plaintiffs' Complaint for Damages with prejudice;
3. A designation on the verdict form of fault for all responsible parties whether named herein or not in this lawsuit.
4. For an award of statutory attorney's fees and costs incurred in this matter; and
5. For such other relief as this Court deems proper, just and equitable.

DATED this 7th day of July, 2023.

MILLER MERTENS & COMFORT, PLLC

By: /s/ Christopher J. Mertens
CHRISTOPHER J. MERTENS, WSBA #13591
Attorney for Defendants
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CERTIFICATE OF SERVICE

I hereby certify that on July 7th, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system of such filing to the following:

| | |
|---|--|
| John Burgess johnburgess@lawofficeofdanielsnyder.com Law Office of Daniel Snyder 1000 SW Broadway, Suite 2400 Portland, OR 97205 | VIA REGULAR MAIL <input type="checkbox"/> VIA EMAIL: <input type="checkbox"/> VIA FACSIMILE: <input type="checkbox"/> SERVED BY E-FILING: <input checked="" type="checkbox"/> |
| Sarah L. Wixson Stokes Lawrence Velikanje Moore & Shore 120 N. Naches Avenue Yakima, WA 98901-2757 Sarah.Wixson@stokeslaw.com | VIA REGULAR MAIL <input type="checkbox"/> VIA EMAIL: <input type="checkbox"/> VIA FACSIMILE: <input type="checkbox"/> SERVED BY E-FILING: <input checked="" type="checkbox"/> |
| Ketia B. Wick Fain Anderson VanDerhoef Rosendahl O'Halloran Spillane PLLC 3131 Elliott Avenue, Suite 300 Seattle, WA 98121 ketia@favros.com | VIA REGULAR MAIL <input type="checkbox"/> VIA EMAIL: <input type="checkbox"/> VIA FACSIMILE: <input type="checkbox"/> SERVED BY E-FILING: <input checked="" type="checkbox"/> |

Signed in Kennewick, Washington on July 7th, 2023.

/s/ Chelsea R. Anderson
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